



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
REGIONAL COUNSEL

MAR 18 2011

REQUEST AND DEMAND LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
FEDERAL EXPRESS NEXT DAY DELIVERY

Jon Cantamessa
Shoshone County Board of Commissioners
700 Bank Street, Suite 120
Wallace, Idaho 83873

Re: Notice of Performance of Cleanup Actions
Avery Landing Site, Shoshone County, Idaho

Dear Mr. Cantamessa:

Under the Federal Water Pollution Control Act, also commonly referred to as the Clean Water Act ("CWA"), the United States Environmental Protection Agency ("EPA") is responsible for protecting the public health and welfare from the discharge or threat of discharge of oil and hazardous substances to navigable waters or adjoining shorelines – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a discharge and threat of discharge has occurred at the Avery Landing Site located near the town of Avery in Shoshone County, Idaho ("Site"). The threat posed by hazardous substances at the Site is also governed by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and EPA has spent public funds to investigate and determine the appropriate response to protect public health and welfare at the Site.

Based on presently available information, Shoshone County ("SC") appears to be one of the parties which may be responsible under CWA for cleanup of the Site. Under Sections 311(c) and (e) of CWA, 33 U.S.C. §§ 1321(c) and (e), a State entity may be directed or ordered to perform cleanup actions to protect navigable waters, adjoining shorelines, and the public health and welfare from discharges or threats of discharges of oil and hazardous substances. Records in the possession of EPA show that since on or about 1992, SC has held an easement right-of-way ownership interest in property at the Site, and may have also participated in various activities related to the operation, maintenance and use of a public roadway at this property. It may therefore be appropriate under CWA for SC to participate in cleanup of the Site.

Site Work

An assessment by the state of Idaho ("State") in 1991, and a follow-up inspection by EPA in 1993 confirmed that there were ongoing discharges of oil and possibly hazardous substances from the Site to the St. Joe River. Under oversight by the State, work was then undertaken by Potlatch Corporation in an attempt to prevent further discharges to the river. This work primarily consisted of the construction of free product recovery trenches and the operation of an oil water separator in 1995, and the construction of a vertical barrier containment system and a series of free product collection wells in 2000. Following each these efforts, however, there continued to be discharges of oil and possibly hazardous substances to the St. Joe River.

In 2007, EPA determined that an Engineering Evaluation and Cost Analysis ("EE/CA") was needed in order to more fully evaluate the threats presented by oil and hazardous substances at the Site, and to identify the actions which could be taken to abate such threats. EPA is now nearing completion of the EE/CA process, and anticipates having cleanup actions initiated at the Site during the 2011 work season. As of July 31, 2010, EPA has incurred cost in the amount of approximately \$584,669.95 for the Site.

Notice

EPA presently plans to work with the Federal Highway Administration ("FHA") in an effort to assure the cleanup of property at the Site for which SC holds its easement interest. It may be necessary to take into account potential impacts to State Route 50 as part of this work. As a result, EPA recommends that SC coordinate with FHA in advance of the cleanup actions which are scheduled to take place during the 2011 work season. If, for any reason, it should become necessary for SC to become further involved in the cleanup actions, EPA will so inform SC

Records

EPA has begun to establish an administrative record that contains documents which serve as the basis for selection of the cleanup actions for the Site. A copy of the current administrative record, including the EE/CA, is available for public review and comment at the Avery Community Center/Library located at 10 Depot Road in Avery, Idaho. Copies of the current administrative record will also be available for public review and comment at the EPA, Region 10, offices located at 1910 Northwest Boulevard, Suite 208, in Coeur d'Alene, Idaho, and at 1200 Sixth Avenue in Seattle, Washington. To arrange an appointment in advance of reviewing the copy of the administrative record at the latter location, please contact the Superfund Record Center at (206) 553-4494.


Contacts

The Federal On-Scene Coordinator for the Site is Earl Liverman. EPA is also represented by Richard Mednick, Associate Regional Counsel, in this matter. Mr. Liverman may be reached at telephone number (208) 664-4858 and electronic mail address liverman.earl@epa.gov, and Mr. Mednick may be reached at telephone number (206) 553-1797 and electronic mail address mednick.richard@epa.gov. Please direct all contacts from SC regarding the matters raised in this letter to either Mr. Liverman or Mr. Mednick with the caveat that have all contacts from counsel should be directed to Mr. Mednick.

EPA is interested in knowing within ten (10) days of today's date whether SC plans to make the necessary preparations for State Route 50 in advance of the upcoming cleanup work at the Site.

Thank you for your prompt attention to these matters.

Sincerely,


for Chris Field, Unit Manager
Emergency Response Unit

cc: Earl Liverman
Richard Mednick